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IN THE  
**Supreme Court of the United States**

October Term, 1987

SANDRA K. ELZEY,

*Petitioner,*

v.

JACK E. ARCHER, *et al.*,

*Respondents.*

**BRIEF OF RESPONDENT PIERRE IN  
OPPOSITION TO PETITION FOR A WRIT  
OF CERTIORARI TO THE  
INDIANA SUPREME COURT**

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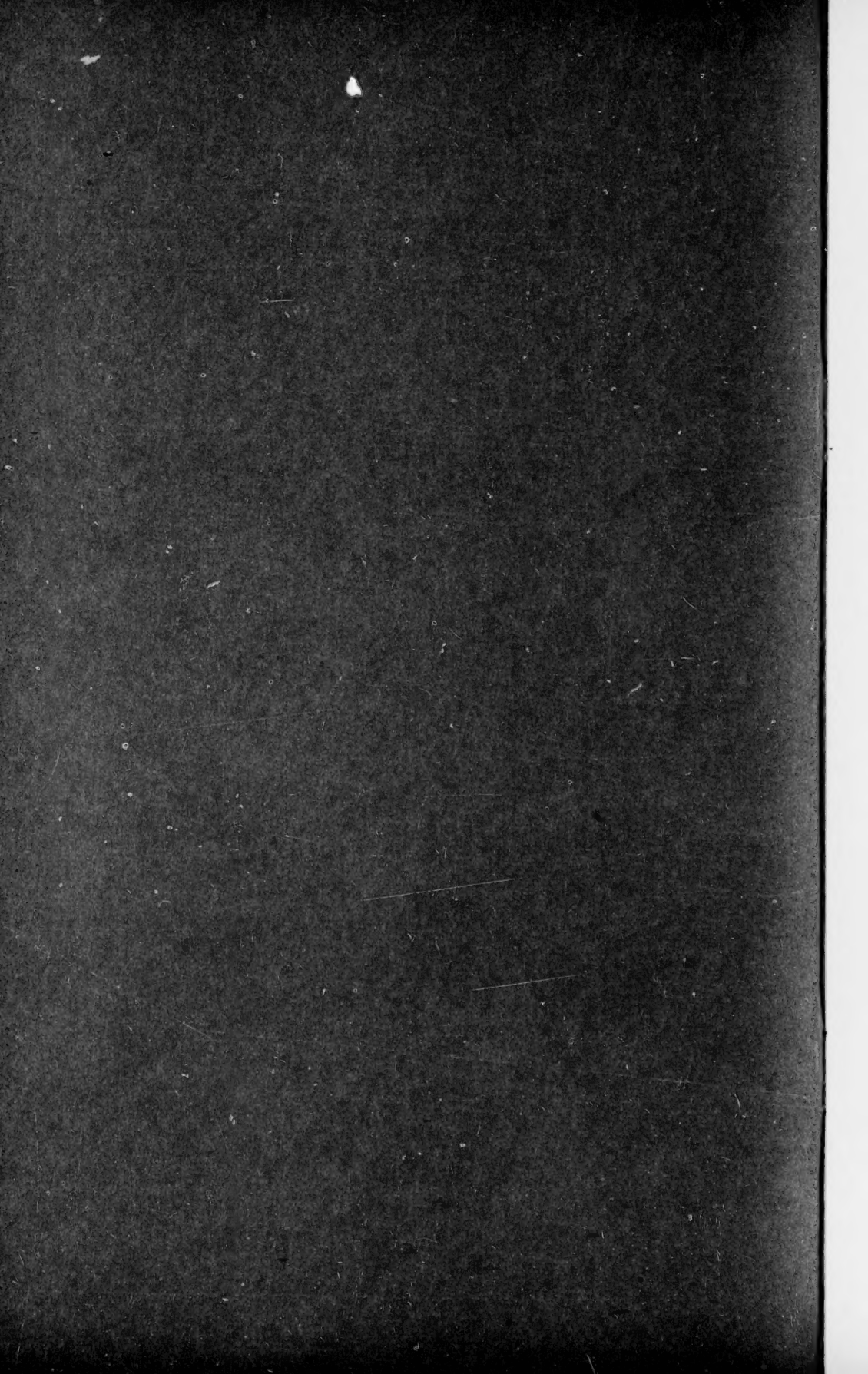
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## **QUESTION PRESENTED**

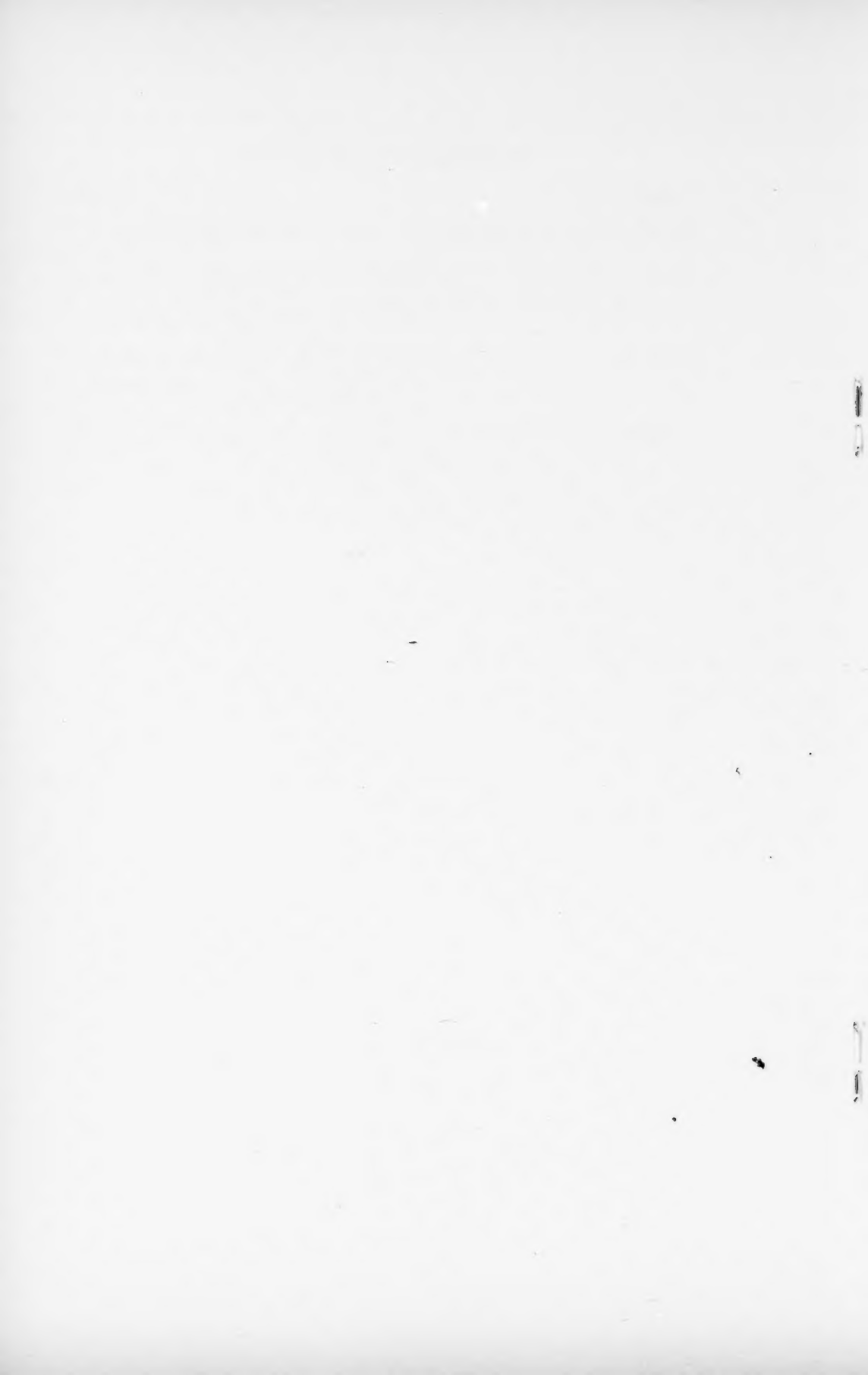
**Whether the Indiana Supreme Court and the Indiana Court of Appeals are competent to determine the jurisdiction of a trial court in the Indiana state court system.**

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**REASON WHY THE WRIT SHOULD NOT ISSUE:**

**THIS CASE DOES NOT PRESENT A  
SIGNIFICANT FEDERAL QUESTION**

This case originated as a civil rights suit under 42 U.S.C. §1983 in the Indiana state courts. Plaintiff sued alleging violation of her civil rights in connection with her arrest on a warrant issued by Respondent Pierre, the judge pro tempore of the Allen County, Indiana, Circuit Court. Judge Pierre raised absolute judicial immunity as a defense and the state trial court granted summary judgment in favor of all defendants, including Judge Pierre.

Plaintiff appealed to the Indiana Court of Appeals, which affirmed, holding that Judge Pierre did not act in the clear absence of all jurisdiction, and was therefore entitled to absolute judicial immunity. The Indiana Supreme Court declined to accept transfer of the case from the Court of Appeals, and Plaintiff then petitioned this Court for a writ of certiorari.

It is evident that no question of federal law is involved. Plaintiff does not dispute the analysis of the Indiana Court of Appeals insofar as that analysis holds that a judge will be subject to liability for his judicial acts only when those acts are performed "in the clear absence of all jurisdiction." Indeed, that is precisely the analysis of *Stump v. Sparkman*, 435 U.S. 349, 357; 98 S. Ct. 1099, 1105 (1978). Plaintiff's argument, rather, is that the Indiana Court of Appeals and the Indiana Supreme Court misconstrued the Indiana jurisdictional statutes and erred in holding that Judge Pierre did *not* act "in the clear absence of all jurisdiction." Determining the jurisdictional competence of a state trial court is, however, a question of state, not federal, law: it is a question which the Indiana Court of Appeals and the Indiana Supreme Court are competent to determine, and which this Court is not competent to determine.

If a state court's jurisdictional ruling rests (even partly) on the state court's understanding of federal law, then that jurisdictional determination is subject to review and correction in this Court. When, however, the state court's interpretation of state jurisdictional law rests solely on state law, there is nothing for this Court to consider. "This Court concededly has no authority to revise the North Dakota Supreme Court's interpretation of state jurisdictional law." *Three Affiliated Tribes v. Wold Engineering*, 467 U.S. 138, 151, 104 S. Ct. 2267, 2276 (1984). The Indiana Court of Appeals decision, reproduced in the Appendix to the Petition herein, pp. A7—A18, determined on the basis of an Indiana statute, Indiana Code §34-1-57-3, that Judge Pierre "was acting beyond his jurisdiction but not without jurisdiction." Appendix to Petition for Writ of Certiorari, p. A14. Accordingly, the Indiana Court of Appeals made a jurisdictional determination based solely on state law,



and this Court has no power to revise that jurisdictional determination. Only the Indiana Supreme Court has that power, which it declined to exercise.

### CONCLUSION

For the foregoing reasons, Respondent Pierre respectfully urges that the writ of certiorari be denied.

Respectfully submitted,

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